IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1283 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DAHYABHAI NATHABHAI MODI

Versus

RAMANLAL SOMABHAI GAMIT- DELETED IN THE TRIBUNAL

Appearance:

MR VJ DESAI for Petitioner

MR AV TRIVEDI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 23/02/2001

C A V JUDGEMENT

This is an appeal under section 173 of the Motor Vehicles Act, 1939 filed by the appellant-original claimant against the judgment and award dated 25.8.1982

recorded by the learned Motor Accident Claims Tribunal (Aux.) Surat, in Motor Accident Claim Petition No.231/80, under which the learned Tribunal has awarded compensation of Rs.37,100/- with interest at 6% per annum from the date of application till the date of deposit of amount in the tribunal with proportionate costs thereon as against the claim made by the appellant-petitioner in a sum of Rs.55,000/-. The appellant-original petitioner had come out with a case that he has sustained grievous injury and permanent disablement in a motor accident which took place near Chowk Bazar in Surat. Learned Tribunal awarded compensation as aforesaid. The appellant-original claimant felt aggrieved by the said amount of compensation and, therefore, the present appeal has been preferred for enhancement of amount of compensation before this court.

2. It has been mainly contended here that the learned tribunal has not properly appreciated the evidence produced before the tribunal and the tribunal has granted the amount of compensation which is on lower side. The appellant-original claimant, therefore, prays that the present appeal be allowed and the amount of compensation be enhanced to Rs.55,000/- with proportionate costs and interest.

3. The appeal was admitted and notices were issued. Mr AV Trivedi, learned Advocate appears on behalf of the Insurance Company-respondent no.3. Respondent no.2 has not appeared whereas name of respondent no.1 was ordered to be deleted.

4. I have heard the learned Advocates for the parties and have perused the papers. In fact, learned Advocate appearing on behalf of the appellant has taken me through the judgment and award of the tribunal and has also taken me through the evidence produced on record by the appellant-original claimant.

5. During the course of her argument, Ms.Shubhra Almola, learned Advocate has raised the following points for claiming enhancement of the amount of compensation:

(i) Learned Tribunal has assessed the average income of the appellant-original claimant at Rs.650/- per month but has wrongly deducted personal expenses of Rs.150/-. That if that amount is taken into consideration, then the appellant would be entitled to additional amount of compensation of Rs.7,200/-.

(ii) That the tribunal has wrongly assessed the loss of income of Rs.100/- per month after the date of retirement and has wrongly applied the multiplier of four. That in fact the multiplier of eight should have been adopted and loss of income should have been assessed at Rs.300/- per month. That this would entitle the appellant-original claimant to an additional amount of compensation in sum of Rs.28,800/-.

(iii) That the tribunal has wrongly assessed the medical and other expenses to the tune of Rs.2500/-. That it should have been enhanced to Rs.3600/-.

(iv) That the Learned tribunal has wrongly assessed the amount of compensation under the head of Pain,shock and suffering at Rs.7000/-. That it ought to have assessed this compensation under this head at Rs.12,000/- and, therefore, the appellant-original claimant would be entitled to enhanced amount of compensation of Rs.5,000/-.

(v) That the tribunal has granted interest at 6% per annum. That this may be enhanced.In the alternative, it has been claimed that this court may award interest at 15% per annum at least on the enhanced amount from the date of the petition.

6. On the other hand, Mr AV Trivedi, learned Advocate for the Insurance Company had no voice in the matter since the Insurance Company could not contest the appeal on the quantum of amount of compensation. However, he had suggested that so far as point no.3 is concerned, there was justification on the part of the tribunal, in view of the submission made by the learned Advocate for the appellant-original claimant before the tribunal itself. We are, therefore, required to consider the aforesaid argument of Ms. Almola, which has been formulated hereinabove.

7. So far as the first point is concerned, it is clear that so far as the deductions are concerned, they are normally made from the income assessed by the tribunal or the court in cases of the persons who may have died on account of injuries sustained in Motor Vehicle accident. It is her argument that the personal expenses are not deducted in cases where injured persons

are alive and they themselves claim compensation. I have given my thoughtful consideration to the aforesaid argument of the learned Advocate for the appellant. It is true that such deductions are ordinarily required to be made in cases of the persons, who may have died on account of injuries sustained in motor vehicle accidents. At the same time, it is also required to be considered here that injured persons may not be required to go to their work place. Therefore, to some extent, some expenses may be saved, which such persons would otherwise incur if they would require to go to their work place. Sometimes, they go by vehicle of their own, sometimes, they may go by public service vehicle. They may spend some amount while discharging their official functions in the place of their work. These expenses may be saved if they are not required to go to the place of work. In that view of the matter, I am of the view that instead of deducting Rs.150/- per month, a moderate amount of Rs.50/- could be deducted and if that amount is deducted, then instead of Rs.150/- per month, deduction would be Rs.50/- per month and, therefore, the appellant-original claimant would be entitled to additional amount of Rs.100/- per month which would amount to Rs.1200/- per year. The learned tribunal had adopted a multiplier of four considering the fact that the appellant-original claimant was 58 years of age at the time of the accident. The tribunal has observed that the appellant-original claimant would have been in service upto 60 years in normal course and at the option of the employer, he should have retired at the age of 62. Therefore, the learned tribunal adopted a multiplier of four. We can also adopt the said multiplier and if that is done, an additional amount of compensation can be safely and conveniently assessed at Rs.4,800/-. Therefore, the learned Advocate for the appellant is partly right in arguing that the amount has been wrongly deducted under this head. Therefore, the appellant-original claimant will be entitled to enhancement of compensation under this Act to the tune of Rs.4,800/-.

8. Then we turn into the second point. Learned tribunal has considered that after retirement, the present appellant may suffer loss of income at Rs.100/- per month for a period of three years i.e. for a period of 36 months and, therefore, the total loss has been assessed at Rs.3,600/-. Here the learned Advocate for the appellant has contended that the loss of income should have been assessed at Rs.300/- per month for about 8 years and, therefore, the total amount should be assessed at Rs.28,800/-. It is not possible to agree with this sort of argument advanced on behalf of the

appellant. It is to be seen that the learned tribunal has considered in para 20 of the judgment that at the retirement the appellant would have got income at Rs. 693/- per month. In that event, it could not be said that he would suffer loss of Rs.600/- per month. When the total amount is Rs.700/- as assessed by the tribunal, the loss would not be Rs.600/- per month. It is more so, when the disablement is assessed at 45%.

9. It is to be seen that after retirement even if a person starts a business or undertakes some job, his income may be much less than the income derived by him during the course of the continuation of his service before retirement. In that view of the matter, it is not possible to agree with the argument of the appellant that the loss should be assessed at Rs.300/- per month. Looking to the fact that the present appellant was getting Rs. 517/- at the time of the accident and looking to the fact that his income at the age of 62 has been assessed at less than Rs.700/- per month and when the average income has been assessed at Rs.650/- per month, then his income could not be assessed at Rs. 600/- per month after retirement. On the contrary, it may be assessed around Rs.300/per month and, therefore, having regard to 45% of disablement, the loss can be assessed at Rs.125/- per month considering the rounded off figure annual loss can be assessed at Rs.1500/- per year.

10. Another argument of the learned Advocate for the appellant is that multiplier of 8 should be adopted. Here it is to be seen that at the age of 58 years, the learned tribunal has already considered that the extra years during which the appellant would have remained in service, then, after the retirement again multiplier of 8 is sought by the appellant. In my view, it would be appropriate to have a multiplier of four after the retirement and if that is adopted, the loss can be conveniently assessed at Rs.6000/- and not Rs.28,800/- as has been submitted by the learned Advocate for the appellant.(1500 x 4 = 6000).

11. So far as the third point is concerned, the learned Advocate for the appellant has argued at length that the tribunal has erred in assessing the amount of Rs.2500/- as loss suffered by the appellant for medicinal and other expenses. It would be worthwhile to refer to the observations made by the learned tribunal during the course of the judgment. It can be reproduced for ready reference from para 21 as under:

"The learned Advocate Mr Intwala appearing on behalf of the claimant submitted that considering the period of hospitalisation, considering the say of the claimant that he had to keep an attendant with him and that his wife has also to attend during his stay as an indoor patient, considering the special diet, food which the claimant was required to take and the conveyance expenses etc. the total amount of Rs.2,500/- be awarded to him. I do not think that the said figure is much because the claimant is visiting the hospital since two years and he might as well have to go sometimes, though rarely to the hospital, hence, the amount of Rs.2500/- should be awarded under the head."

The aforesaid observation is the outcome of the argument of the learned Advocate who appeared for the original claimant before the tribunal. It, therefore, appears that the learned tribunal has accepted the argument of the learned Advocate, who appeared for the claimant before it. The argument was appreciated and accepted in full. This shows that this was the submission of the learned Advocate for the claimant before the tribunal and that has been accepted in full. In that view of the matter, when the submission was made and accepted in full, there is no need to differ from the view taken by the tribunal on the basis of the submissions made and accepted by the tribunal. Therefore, no change is required to be made under this Head.

12. So far as the point no. 4 is concerned, the learned tribunal has considered Rs.7000/- to be a just compensation under the Head pain, shock, and suffering. It has been stated that looking to the nature of injuries sustained by the present appellant and looking to the disablement sustained at the age of 58 it would be appropriate to consider at least Rs.12,000/- to be just compensation under the head pain, shock and suffering. It is, therefore, submitted that there should be an increase in the amount of compensation by Rs.5000/- under the Head of pain, shock and suffering. It is true that the appellant has sustained grievous hurts and disablement has been assessed to the extent of 45%. For this purpose, learned Advocate for the appellant has relied upon a couple of decisions in the case of Bharat Premjibhai v. Municipal Corporation, reported in 19 GLR 585 and in the case of State v. Budhabhai Bhalabhai & Ors,(23 GLR 525.) Having regard to the observations made therein and considering the facts and circumstances of the case and looking to the nature of injuries sustained

by the appellant and also considering the fact that the petitioner sustained 45% permanent partial disablement and also having regard to the age at the time when he received injuries, I am of the opinion that this is a fit case wherein the amount of compensation under the head pain, shock and suffering should have been assessed at Rs.10,000/- instead of Rs.7,000/whereby there shall be an increase of Rs.3,000/-.

13. The last point argued on behalf of the appellant is that whatever compensation may be enhanced, this court may award interest at the rate of 15% per annum on the enhanced amount from the date of the original petition. For this purpose, learned Advocate for the appellant has relied upon a decision of Hazi Zainullah Kahan v. Nagar Mahapalaika, Allahabad (TAC(1950-95) SC 13. Relying upon the said decision, it has been submitted by the learned Advocate for the appellant that the interest should be awarded at 15% per annum from the date of petition till the date of payment of the enhanced amount. So far as the interest is concerned, the Supreme Court held that cumulative interest be awarded at 8% from the date of filing of the petition i.e. from 1.3.1972 till 31.3.1985. That thereafter, from 1.4.1985, till the date of payment, the claimant shall be entitled to 12%. It is further specified that if the compensation is not paid till 31st December, the amount shall carry interest at 15%. Therefore, the Supreme Court has not directly awarded interest at 15% right from the date of the petition but different rate of interest as awarded by the Hon'ble Supreme Court is effected from different dates. Again, the rate of interest is a matter of discretion of the courts and tribunal and on going through the said decision, I find that the Hon'ble Supreme Court has not decided the matter as a matter of principle as to what should be the interest. Any way, I am of the opinion that so far as the enhanced amount is concerned, the rate of interest should be 6% per annum till the date of 31.12.1982 since the matter has been disposed of by the tribunal on 25.8.1982. Then from 1.1.1983, the rate of interest should be 9% per annum and from 1.1.2000, the rate of interest should be 12% per annum. In that view of the matter, I am of the opinion that the rate of interest for the purpose of the present appeal should not be more than 12% per annum. Here it is also required to be considered that the rates of interest in market are not consistent. In there is fluctuation in the market, the rate of interest fluctuates up and down. Even the bank rates are also being reduced time and again. Even the interest of provident fund is also being reduced time and again. Having regard to the fluctuating position, it

would be in the fitness of things that the rate of interest should not exceed 12% per annum even from 1.1.2000. In the aforesaid view of the matter, the appellant will be entitled to additional amount as follows:

(i) Rs. 4,800/- Point No.1
(ii) Rs. 6,200/- Point No.2
(iii) Rs. 3,000/- Point No.4

Rs.13,800/- Total
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14. In the above view of the matter, the appeal will naturally partly succeed and the appellant will be entitled to enhanced amount of compensation of Rs.13,800/- with interest as above. Therefore, this appeal is partly allowed. The respondent shall pay to the appellant and the appellant shall recover from the respondent an additional amount of compensation of Rs.13,800/- (Rs. Thirteen thousand and eight hundred only) with proportionate cost and running interest at 6% per annum from the date of the petition till 31.12.1982 and at 9% per annum from 1.1.1983 to 31.12.1999 and at 12% from 1.1.2000 till the payment is made. The respondent shall deposit the aforesaid amount before the learned tribunal and on such deposit, 65% of the amount shall be invested in Fixed Deposit in any nationalised bank of the choice of the appellant in his name and the remaining amount shall be paid to him by crossed A/c. payee cheque by the tribunal. The F.D.R. shall be obtained by the tribunal on usual terms and conditions. The appellant shall not be permitted to obtain any loan and there shall not be any premature encashment of or withdrawal from the said F.D.R. The judgment and award of the tribunal shall stand modified accordingly.

Date:23.2.2001 [D P Buch, J.]
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